

**Additional Comments on Action Point 2: Comments on Paul Andrews High Court Judgement
on behalf of Friends of the Earth England, Wales and Northern Ireland**

North Yorkshire Minerals and Waste Joint Local Plan (Reopening of Examination in Public)

Unconventional Oil and Gas

(Following Hearings on 24th and 25th January 2019)

**Action Point 2: Comments on the Cllr Andrews High Court Judgement: R(OAO Andrews) v SSBEIS
and SSHCLG [CO/3256/2018]**

N.B. The following text was included within our previous hearing statement submitted at the beginning of this year:

1. We are supportive of the Inspector's interpretation of the above judgement: essentially that MPAs are free to adopt the wider Planning Practice Guidance definition¹ in local plans provided they have explained their reasoning for doing so and assuming they have "recognised" the statutory definition².
2. The judge's comments support the legality of the Joint Council's decision to apply a local definition in the NYMWJLP. This definition links to draft policies M16 and M17, providing suitable surface-based restrictions (including a 500m buffer) are in place for all types of "surface hydrocarbon development", not just Associated High-Volume Fracturing as defined in legislation.
3. The Government's response to the application for hydraulic fracturing consent in relation to the KM8 well at Kirby Misperton illustrates the need to give very careful consideration to fracking proposals falling outside the definition of "associated hydraulic fracturing" set out in section 4B of Petroleum Act 1998. At KM8 the total quantity of fracturing fluid proposed to be used was just under 3,300m³ in total and four of the five proposed fracturing stages were intended to use less than 1,000m³ of fracturing fluid. This meant that the proposals fell outside the definition of "associated hydraulic fracturing" in section 4B(1) of the Petroleum Act 1998 with the result that the statutory requirement for hydraulic fracturing consent under section 4A of the Petroleum Act was not engaged.

¹ (ID:27-129-20140306)

² Fracking definition within the Infrastructure Act (2015) – especially the reference to fluid volumes i.e. 1000m³ at any *each* stage or 10,000m³ in total

4. Nevertheless, Third Energy still chose to apply to the Secretary of State for hydraulic fracturing consent in the autumn of 2017. The Secretary of State's response to this situation was to issue ministerial directions to the Oil and Gas Authority under section 9 of the Energy Act 2016³. The directions required the Oil and Gas Authority, before granting completion work approval for fracking operations where *at least one* of the proposed fracking stages was planned to involve the use of more than 1,000m³ of fracturing fluid, to require the operator to provide the Secretary of State with the information required to assess whether the conditions set out at section 4A of the Petroleum Act 1998 were met and to take account of any views expressed by the Secretary of State about those matters.
5. The effect of these directions was to apply the regulatory safeguards set out in section 4A to a much wider range of fracking proposals than those specified in the definition of "associated hydraulic fracturing" at section 4B(1) of the Petroleum Act 1998. The Secretary of State's approach is a clear indication that he considered that it was in the public interest to apply stringent regulatory safeguards to fracking proposals falling *outside* the strict parameters of the section 4B(1) definition.
6. The approach adopted by the Secretary of State to the fracking operations proposed at KM8 and other similar proposals sets a very clear precedent for applying appropriate regulatory safeguards to fracking operations that do *not* fall within the statutory definition of "associated hydraulic fracturing". This is, again, consistent with the approach adopted in draft policies M16 and M17 of the NYMWJLP.
7. Overall, we invite you to conclude that the proposed wording of draft policies M16 and M17 have been properly justified (so as to comply with the WMS) and that the policy is sound in terms of the NPPF.

³ The directions came into force on 29th November 2017.